

STATE OF VERMONT

SUPERIOR COURT
ADDISON UNIT

CIVIL DIVISION
Docket No.

STATE OF VERMONT, AGENCY OF
AGRICULTURE, FOOD and MARKETS,
and AGENCY OF NATURAL
RESOURCES,
Plaintiff,

v.
NOP BROTHERS AND SONS, HANK NOP,
WARREN NOP, GERRIT NOP,
WILLIAM NOP, and JOHN NOP,
Defendants.

CONSENT ORDER AND FINAL JUDGMENT ORDER

This action came before the Court pursuant to the parties filing Pleadings by Agreement under Vermont Rule of Civil Procedure 8(g). Based upon those Pleadings by Agreement and the parties' Stipulation for the Entry of Consent Order and Final Judgment Order, and pursuant to 10 V.S.A. § 8221, 6 V.S.A. § 4995, and the Court's inherent equitable powers, it is hereby ADJUDGED, ORDERED and DECREED as follows:

VIOLATIONS

1. Defendants' alleged violations of 10 V.S.A. § 1259(a) on Defendants' Gagnon, Cloutier, and Gagnon Farms on December 8, 2016, and May 3, 2018, as set forth by Plaintiffs in paragraphs 64-74 of the parties' Pleadings by Agreement, are deemed proven and established as a "prior violation" for purposes of penalty assessment in any future State proceedings arising under Title 10 of the Vermont Statutes Annotated against Defendants, their

successors, and assigns. State proceedings shall include permit proceedings and enforcement actions for administrative and civil penalties.

2. Defendants' alleged violations of 6 V.S.A. § 4810(b) on Defendants' Gagnon, Cloutier, and Galvin Farms by failing to follow sections 6.01(b), 6.02(a), and 6.03(c)(2) of the Required Agricultural Practices (RAPs), and section 6.A.4 of the Large Farm Operation (LFO) Rules on December 8, 2016, and May 3, 2018, as set forth by Plaintiffs in paragraphs 75-80 and 83 of the parties' Pleadings by Agreement, are deemed proven and established as a "prior violation" for purposes of penalty assessment in any future State proceedings arising under Title 6 of the Vermont Statutes Annotated against Defendants, their successors, and assigns. State proceedings shall include permit proceedings and enforcement actions for administrative and civil penalties.
3. Defendants' alleged violations of 6 V.S.A. § 4810(b) on Defendants' Fields identified as 1038-1 Brg-01, 829-11 Roy-03, 829-13a Roy-05, and 11068-20 Riv-01 by failing to follow section 6.07(a) of the RAPs, and section 6.A.4 of the LFO Rules on December 8, 2016, and July 5, 2018, as set forth by Plaintiffs in paragraphs 81, 82, and 84 of the parties' Pleadings by Agreement, are deemed proven and established as a "prior violation" for purposes of penalty assessment in any future State proceedings arising under Title 6 of the Vermont Statutes Annotated against Defendants, their successors, and assigns. State proceedings shall include permit proceedings and enforcement actions for administrative and civil penalties.

PENALTIES

4. Pursuant to the Stipulation between the parties, Defendants shall pay a civil penalty of Seventy-Five Thousand Dollars (\$75,000.00).
5. Defendants shall pay this penalty by check to the “State of Vermont” and shall send the check to:

Megan Hereth, Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
6. Defendants shall pay this penalty at the time that they sign the Stipulation for the Entry of Final Judgment Order. The State shall hold Defendants’ check in trust until such time as the Court approves and enters the Final Judgment Order. If for any reason the Court does not enter the Final Judgment Order within sixty (60) days of the date of the last party’s signature of the Stipulation, the State shall return Defendants’ check to Defendants. If the Court enters the Final Judgment Order at a later date, then Defendants shall pay the penalty within ten (10) days following the date of Entry of Final Judgment Order.
7. In the event that Defendants fail to pay this penalty or fail to pay this penalty in the manner described in paragraphs 4-6, such failure shall constitute a breach of this Final Judgment Order and interest shall accrue on the entire unpaid balance at twelve percent (12%) per annum, beginning on the first day after the penalty becomes due. Defendants shall also be liable

for costs incurred by the State, including reasonable attorney's fees, to collect any unpaid penalty amount.

CORRECTIVE ACTIONS

8. Defendants shall perform the following corrective actions at their Gagnon Farm at 499 Rt. 7, Salisbury, Vermont; Cloutier Farm at 2386 Rt. 7, Salisbury, Vermont; and Galvin Farm at 381 West Salisbury Rd., Salisbury, Vermont; and on their Fields located in Salisbury and Middlebury, Vermont, identified as 1038-1 Brg-01, 829-11 Roy-03, 829-13a Roy-05, and 11068-20 Riv-01 (Defendants' Fields):
 - a. By **November 1, 2021**, Defendants shall implement to the satisfaction of the Vermont Agency of Natural Resources (ANR) and Agency of Agriculture, Food and Markets (AAFM) a long-term plan approved by ANR and AAFM (the Long-Term Plan) to permanently eliminate discharges of agricultural waste from the Gagnon, Cloutier, and Galvin Farms. Defendants' implementation of the Long-Term Plan, as further referred to herein, shall include completion of all construction and modification of waste management systems.
 - b. By **November 15, 2020**, Defendants shall submit a conceptual Long-Term Plan to ANR and AAFM. By **January 15, 2021**, Defendants shall submit a preliminary Long-Term Plan to ANR and AAFM. Defendants' preliminary Long-Term Plan shall detail the farm's plan

for how it will manage manure and wastewater. By **April 15, 2021**, Defendants shall submit a final Long-Term Plan to ANR and AAFM.

- c. Within five (5) days of implementation of the Long-Term Plan, Defendants shall provide ANR and AAFM with notification that all requirements of the Long-Term Plan have been followed. Within sixty (60) days of implementation of the Long-Term Plan, Defendants shall provide ANR and AAFM with verification that all requirements of the Long-Term Plan have been followed. Defendants' verification shall include a professional engineers' certification for all Long-Term Plan work to Defendants' waste management systems. Defendants' notice and verification shall be submitted to ANR via Chris Gianfagna (chris.gianfagna@vermont.gov) and AAFM via Nate Sands (nathaniel.sands@vermont.gov). Email format with attachments is an acceptable format for submission. ANR and AAFM may conduct inspections following receipt of Defendants' verification.
- d. Defendants must obtain all regulatory approvals necessary to implement the Long-Term Plan, including any required construction stormwater permits and LFO permit amendments.
- e. Until the Long-Term Plan is implemented to ANR and AAFM's satisfaction, Defendants shall ensure there are no discharges of agricultural waste from their Gagnon, Cloutier, or Galvin Farms, or from Defendants' Fields, to waters of the State, shall maintain their

total agricultural waste storage capacity in compliance with the RAPs and LFO Rules, and shall perform the following corrective action at the Gagnon, Cloutier, and Galvin Farms, and on Defendants' Fields (the Interim Plan):

- i. Other than those calves currently housed at the Galvin Farm calf barn, Defendants shall not house, raise, feed, or manage animals at their Galvin Farm unless and until the Long-Term Plan is implemented to ANR and AAFM's satisfaction.
- ii. Defendants shall prohibit occupation of the mobile home/trailer at their Cloutier Farm unless and until obtaining an approved wastewater permit from ANR.
- iii. Defendants shall prevent runoff of agricultural wastes from the following areas and shall implement the following practices, at a minimum:
 1. Gagnon Farm manure transport and scraping operations – eliminate historical waste and revegetate on or before June 1, 2020, scrape and remove waste to prevent overflow and runoff, maintain adequate function of the impervious surfaces and natural spring, and prevent water flow through or over the area;
 2. Cloutier Farm barnyards and laneway – maintain adequate function of diversion ditches and impervious surfaces, maintain adequate vegetation to limit erosion, maintain adequate freeboard in the manure pit, and prevent animals from stalling in the laneway;
 3. Cloutier Farm septic system, barrels, and mobile home/trailer area – empty the septic tank and discontinue use unless pre-approved by ANR, limit contents of barrels to supplemental feed or nutrition for the animals, and monitor barrels to prevent accumulation or runoff of leachate;
 4. Galvin Farm denuded barnyard – maintain adequate function of perimeter ditch, including planting of vegetation or installation of appropriate fill to filter

waste, and maintain adequate function of field area to absorb flow;

5. Galvin Farm calf barn with foundation hole(s) – maintain adequate function of impervious surfaces and containment area, including berms and filled seep holes;
6. Galvin Farm informal waste pit – empty the pit and discontinue its use unless and until pre-approved by ANR and AAFM;
7. Galvin Farm manure pile – prevent all bedding pack and agricultural waste from piling outside or open to the elements unless the stacking area is pre-approved by AAFM;
8. Galvin Farm concrete barnyard and drop inlet – maintain adequate function of impervious surfaces and cap the drop inlet with a water-tight seal unless and until otherwise approved by ANR and AAFM;
9. Galvin Farm calf barn liquid waste storage area – maintain adequate function of impervious surfaces and containment area, including sufficient clean bedding pack absorption material, and scrape and remove waste to prevent overflow and runoff;
10. Galvin Farm manure loading area – eliminate historical waste and revegetate on or before June 1, 2020, maintain adequate function of the impervious surfaces, and prevent water flow through or over the area;
11. Field 1038-1 buffers – maintain adequate perennial vegetation within required buffer zones between croplands and adjacent surface waters;
12. Field 829-11 buffers – maintain adequate perennial vegetation within required buffer zones between croplands and adjacent surface waters;

13. Field 829-13a buffers – maintain adequate perennial vegetation within required buffer zones between croplands and adjacent surface waters;
 14. Field 11068-20 buffers – maintain adequate perennial vegetation within required buffer zones between croplands and adjacent surface waters.
- f. Any and all discharges from the Gagnon, Cloutier, or Galvin Farms, or from Defendants' Fields occurring prior to implementation of the Long-Term Plan to ANR and AAFM's satisfaction shall constitute violations of this Final Judgment Order pursuant to paragraphs 14-15 and may subject Defendants to additional penalties as provided by Titles 6 and 10 of the Vermont Statutes Annotated.
- g. Until the Long-Term Plan is implemented to ANR and AAFM's satisfaction, Defendants shall provide to ANR and AAFM a Monthly Interim Report. Defendants' Monthly Interim Report shall be submitted by the last day of each month, beginning with the first full month after signing the Stipulation for Entry of Final Judgment. The Monthly Interim Report shall include:
- i. A narrative description of the waste management conditions at the Gagnon, Cloutier, and Galvin Farm areas, and on Defendants' Fields listed in subsections 8(g)(ii)-(iii) below;
 - ii. Monthly photographs of each of the following areas:
 1. Gagnon Farm manure transport and scraping operations,
 2. Cloutier Farm septic system, barrels, and mobile home/trailer area,
 3. Galvin Farm denuded barnyard,
 4. Galvin Farm informal waste pit, and
 5. Galvin Farm concrete barnyard and drop inlet,

6. Field 1038-1 buffers,
 7. Field 829-11 buffers,
 8. Field 829-13a buffers, and
 9. Field 11068-20 buffers.
- iii. Weekly photographs of each of the following areas:
1. Gagnon Farm manure transport and scraping operations,
 2. Cloutier Farm barnyards and laneway,
 3. Galvin Farm calf barn with foundation hole(s),
 4. Galvin Farm manure pile,
 5. Galvin Farm calf barn liquid waste storage area, and
 6. Galvin Farm manure loading area.
- iv. Photographs of Field 829-11 and Field 829-13a buffers when they are planted and again when the vegetation grows.
- v. If a discharge is observed at the Gagnon, Cloutier, or Galvin Farm, or from Defendants' Fields, the report shall identify it and describe Defendants' implemented remedy to eliminate it.
- vi. The report shall be submitted to ANR via Chris Gianfagna (chris.gianfagna@vermont.gov) and AAFM via Nate Sands (nathaniel.sands@vermont.gov). Email format with attachments is an acceptable format for the monthly interim reports.

OTHER PROVISIONS

9. ANR and AAFM shall have access to the Gagnon, Cloutier, and Galvin Farms, and Defendants' Fields to conduct inspections at reasonable times to determine compliance with this Order.
10. The parties waive: (a) all rights to contest or appeal this Final Judgment Order and (b) all rights to contest the obligations imposed upon Defendants under this Final Judgment Order, in this or any other administrative or judicial proceeding involving the State of Vermont.
11. This Final Judgment Order is binding upon the parties and their successors and assigns. Any change in Defendants' ownership, corporate, or other legal

status, including any transfer of assets, shall in no way alter the responsibilities of Defendants, their successors, or their assigns under this Final Judgment Order.

12. Nothing in this Final Judgment Order shall be construed to create or deny any rights of, or grant or deny any cause of action to any person not a party to this Final Judgment Order.
13. This Final Judgment Order shall become effective only after it is entered as an order of the Court at which time it shall become final.
14. Any violation of this Final Judgment Order shall be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties for contempt, as set forth in 6 V.S.A. Chapter 215, Subchapter 10, and 10 V.S.A. Chapters 201 and 211.
15. The State of Vermont and this Court reserve continuing jurisdiction to ensure future compliance with all statutes and rules applicable to the specific facts described herein or in the Stipulation for the Entry of Final Judgment Order.
16. Defendants shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein or in the Stipulation for the Entry of Final Judgment Order.
17. Nothing in this Final Judgment Order shall be construed as having relieved, modified, or in any manner affected Defendants' obligations to comply with all federal, state, or local statutes, regulations, permits or directives applicable to Defendants.

18. The Court finds based on the representations of the parties that the parties have negotiated this Consent Order in good faith, that implementation of this Consent Order will avoid prolonged and complicated litigation between the parties, and that this Consent Order is fair, reasonable, and in the State of Vermont's interest.
19. This Final Judgment Order may be altered, amended, or otherwise modified only by subsequent written agreement signed by the parties or their legal representatives and approved by this Court. Any representations, whether written or oral, not set forth in this Final Judgment Order shall not be binding upon any party and shall be of no legal force or effect.

SO ORDERED and ENTERED as FINAL JUDGMENT.

Electronically signed pursuant to V.R.E.F. 9(d)
01/04/2021 10:01:35 AM



Mary Miles Teachout
Superior Court Judge